

which will accomplish certain planned resource management objectives.

(2) Escaped prescribed fire means a prescribed fire which has either exceeded the prescription or has rekindled after it has been declared to be out.

(b) In the absence of a written reciprocal agreement with any fire organization or in situations outside the scope of an agreement, the Forest Service is authorized to render emergency assistance in suppressing fires and in preserving life and property from the threat of fire within the vicinity of Forest Service fire protection facilities under the following conditions:

(1) If a prescribed fire initiated on lands administered by the Forest Service escapes onto lands not administered by the Forest Service, the Forest Service may commit personnel, materials, and equipment without reimbursement or consideration of the fire's continuing threat to National Forest System lands or resources.

(2) When requested, the Forest Service may commit personnel, materials, and equipment on a reimbursable basis on lands not administered by the Forest Service without regard to the fire's threat to National Forest System lands or resources.

[48 FR 44537, Sept. 29, 1983]

Subpart B—Appeal of Decisions Concerning the National Forest System

§ 211.16 Appeal of resource recovery and rehabilitation decisions resulting from natural catastrophes.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions arising from recovery and rehabilitation efforts on National Forest System lands and resources damaged in natural catastrophes.

(b) *Matters subject to appeal.* The procedures established in this section apply only to initial written decisions concerning resource removal, recovery, and rehabilitation activities resulting from natural catastrophes, such as forest fires, insect and disease epidemics, floods, winds, and earthquakes, that result from documentation required by

the National Environmental Policy Act and its implementing regulations, policies, and procedures. Notice of the decisions appealable under this section and made after the effective date of this regulation shall be published in a local newspaper of general circulation immediately following the documentation referenced above. Subsequent implementing decisions, such as advertising timber salvage sales and/or awarding contracts, are not appealable under this section or 36 CFR 211.18.

(c) *Who may appeal.* The process set forth in this section is available to any individual or organization wishing to appeal a decision arising from resource removal, recovery, and rehabilitation activities resulting from natural catastrophe.

(d) *Who may comment.* Any person or organization interested in an appeal of a decision under this subpart may submit written comments to the Reviewing Officer for inclusion in the record.

(e) *Levels of appeal.* One level of administrative appeal is available.

(1) Appeals of decisions subject to the procedures of this section made by a District Ranger shall be filed with the Forest Supervisor.

(2) Appeals of decisions subject to the procedures of this section made by a Forest Supervisor shall be filed with the Regional Forester.

(f) *Filing procedures.* (1) To appeal a decision under this section, an appellant must file a written notice of appeal with the Reviewing Officer. If an appellant wishes to request a stay of implementation of the decision, the request must accompany the notice of appeal and be made in accordance with paragraph (i) of this section. The appellant must simultaneously provide a copy of the notice of appeal and any stay request to the Forest officer making the initial decision.

(2) All notices of appeal must be filed within 30 days of publication of the notice of decision.

(g) *Extensions of time.* There shall be no extension of the time periods specified in this section for either an appellant or the Forest Service.

(h) *Content of notice of appeal.* Parties appealing a decision under this section must include the following information in the written notice of appeal:

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(1) The specific activity being appealed;

(2) The date notice of the decision was published;

(3) The Forest Officer who made the decision;

(4) How the appellant is affected by the decision; and

(5) The relief desired.

(i) *Stays.* (1) To request a stay, the appellant must:

(i) File a written request with the Reviewing Officer at the time the appeal is filed, simultaneously providing a copy to the Forest officer who made the initial decision in question.

(ii) Provide a written justification of the need for a stay, which includes a description of the specific activities to be stayed, and specific reasons why the stay should be granted, including:

(A) Harmful site-specific impacts or effects on resources in the area affected by the activity; and

(B) How the cited effects and impacts would prevent a meaningful decision on the merits.

(2) The Reviewing Officer shall rule on a stay request no later than 10 calendar days from receipt.

(i) If a stay is granted, the stay shall specify the activities to be stopped, duration of the stay, and reasons for granting the stay.

(ii) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(iii) A copy of the stay decision shall be sent to the appellant and the Forest Officer who made the initial decision.

(iv) A Reviewing Officer's decision on a stay is not subject to further appeal or review.

(j) *Review procedures.* (1) The Reviewing Officer shall determine if the notice of appeal has been timely filed. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely receipt of the notice of appeal. If the appeal is untimely, the Reviewing Officer will immediately dismiss the appeal and notify the Forest Officer making the initial decision and the appellant.

(2) Upon receipt of a copy of the notice of appeal, the Forest Officer making the decision shall assemble the rel-

evant decision documents and pertinent records and transmit them to the Reviewing Officer within 15 calendar days.

(3) In transmitting the decision documentation to the Reviewing Officer, the Forest Officer shall indicate how and specifically where the appellant's issues are addressed. Where time permits, the Forest Officer may also respond briefly to issues raised in the notice of appeal. A copy of the transmittal letter shall be provided to the appellant(s).

(4) The record on which the Reviewing Officer shall conduct a review consists of the notice of appeal, any other written comments received, the official documentation prepared by the Forest Officer making the initial decision, and any related correspondence, including additional information requested by the Reviewing Officer.

(5) The review record is available for public inspection.

(k) *Requests for additional information.* At any time during the appeal, the Reviewing Officer may request additional information from an appellant, the Forest Officer making the initial decision, or anyone who has submitted written comments. In addition, the Reviewing Officer may discuss issues related to the appeal with the Forest Officer making the initial decision, appellants, or affected parties.

(l) *Decision.* (1) The Reviewing Officer shall issue a final decision on the appeal, in writing, within 90 days of the Reviewing Officer's receipt of the notice of appeal, with a copy to anyone submitting comments.

(2) The Reviewing Officer's decision shall either affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer's decision may include instructions for further action by the Forest Officer making the initial decision.

(3) The Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this section or any other appeal regulation.

(m) *Dismissal.* (1) A Reviewing Officer shall dismiss an appeal without decision on the merits when:

(i) The appeal is not received within the time specified in paragraph (f) of this section;

(ii) The requested relief cannot be granted under existing facts, law or regulation;

(iii) The notice of appeal does not meet the requirements of paragraph (h) of this section;

(iv) The appellant withdraws the appeal; or

(v) The Forest Officer making the initial decision withdraws that decision.

(2) A Reviewing Officer's decision to dismiss is not subject to further appeal or review.

(3) A Reviewing Officer shall give written notice of a dismissal to the appellant and Forest Officer whose initial decision or appeal decision is being appealed.

(n) *Continuance.* Provisions of 36 CFR 211.18 will remain in effect for appeals of decisions concerning activities that result from natural catastrophes filed prior to May 13, 1988.

(o) *Applicability and effective date.* The procedures of this section shall not apply to any appeal received after February 22, 1989.

[53 FR 17032, May 13, 1988, as amended at 54 FR 3357, Jan. 23, 1989]

§ 211.17 Appeal of decisions to reoffer returned or defaulted timber sales on National Forests.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions to reoffer sales of timber that were returned to the Government under the provisions of the Federal Timber Contract Modification Payment Act of 1984 (16 U.S.C. 618) or that were defaulted by the purchaser.

(b) *Matters subject to appeal.* The procedures established in this section apply only to decisions to reoffer timber sales resulting from returned or defaulted timber sale contracts. Implementing decisions, such as advertising and/or awarding a reoffered sale, made subsequent to the initial decision to reoffer a returned or defaulted sale are not appealable under this section or 36 CFR 211.18.

(c) *Notice requirements.* (1) Notice of decisions appealable under this section

and made after April 22, 1988, shall be published in a local newspaper of general circulation and also shall be provided in writing to parties to written instruments issued by the Forest Service who are known to be affected by the decision, as well as to any other interested persons or organizations who have requested notification of the specific decision.

(2) If the sale that is the subject of an appeal has been bid upon or awarded, the Reviewing Officer shall immediately notify the apparent high bidder or sale awardee of the appeal and the opportunity to comment as provided for in paragraph (f) of this section.

(d) *Who may appeal.* The process set forth in this section is available to:

(1) Any individual or organization who, following publication of the interim rule at 36 CFR 211.17 on January 28, 1988, submitted a timely Notice of Appeal on a decision to reoffer a sale of returned or defaulted timber.

(2) Any other individual or organization wishing to appeal a decision made prior to January 28, 1988, to reoffer a sale of returned or defaulted timber.

(3) Except as provided in paragraph (e) of this section, any individual or organization may appeal a decision made after January 28, 1988, to reoffer timber resulting from returned or defaulted timber sales.

(e) *Who may not appeal.* The process set forth in this section is not available to the defaulting purchaser of the original timber sale that is being or has been reoffered.

(f) *Who may comment.* Any person or organization interested in an appeal of a decision under this subpart may submit written comments to the Reviewing Officer for inclusion in the record.

(g) *Levels of appeal.* For decisions to reoffer timber sales made after October 30, 1986, one level of administrative appeal is available. For decisions to reoffer timber sales made prior to October 30, 1986, two levels of administrative appeal are available; the second level being to the next higher administrative level.

(1) Appeals of decisions to reoffer timber sales made by a District Ranger shall be filed with the Forest Supervisor.